

LAW OFFICE OF GARY A. ABRAHAM

4939 Conlan Rd.
Great Valley, New York 14741
716-790-6141; fax is same (please call first)

gabraham44@eznet.net
www.garyabraham.com

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Steven C. Riva, Chief
Permitting Section, Air Programs Branch
U.S. Environmental Protection Agency Region 2
290 Broadway
New York, New York 10007

Re: Ocean County Landfill Corporation and MRPC Holdings, LLC
Draft Title V Permit No. P71-0CMH-001

Dear Mr. Riva:

Please accept the following comments on the above-referenced draft permit. I strongly support EPA's draft permit in this case, based on EPA's long-established approach to analyzing common control relationships between landfills and companion landfill gas-to-energy (LFGTE) facilities.

Two emissions sources (facilities) are considered a single stationary source under PSD/NSR and Title V when the facilities belong to the same major industrial grouping under the Standard Industrial Classification code, are located on one or more adjacent or contiguous properties, and are under the common control.¹ As is often the case in a landfill setting, Ocean County Landfill and MRPC Holdings (the companion LFGTE facility) share the same major industrial grouping (SIC code prefix 249) and are located on contiguous properties. The only remaining question is whether the two facilities are under "common control." Between the permitting agency and facilities this is generally a hotly contested question.

EPA has said that landfills and companion LFGTE plants served by them are presumptively under common control when the LFGTE facility is located (as it is here) on the

¹ 40 C.F.R. §§ 51.166(b)(5), (6) *Cf.* 40 C.F.R. §60.2; 42 U.S.C. § 7661(2); 42 U.S.C. § 7412(a)(1) (CAA Section 112). *See also* Memorandum from EPA, Region 2, to Michael L. Rodburg, Esq., "Common Control Question – Dupont and Dupont Dow Elastomers," November 25, 1997, available at <<http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/2-jntven.pdf>>. *See also* 17 C.F.R. § 240.12b-2 (Securities and Exchange Commission regulations, defining "control (including . . . 'under common control with')" as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise").

landfill site.² This application of the presumption of common control under these circumstances is based on long-established EPA policy recognizing that contractual agreements between co-located landfills and LFGTE facilities allow each some measure of control over the conduct of the other's operations.³ Accordingly, the common control question requires an analysis of the agreements binding the two facilities. The purpose of this analysis, as stated in the Agency's common control determination in this case, is to discover "features of the relationships between OCL and MRPC that EPA finds indicative of a common control relationship."⁴ In most cases, finding one factual feature of the relationship that indicates common control is sufficient to affirmatively determine common control exists.⁵

It was therefore proper that in this case, before finding common control exists, EPA examined numerous documents provided by OCL and MRPC in order to determine whether the presumption of common control between the two facilities is rebutted in this case.⁶ Reviewing such agreements is critical to determining whether common control exists.⁷ Since all three

² Judith M. Katz, Air Division, EPA Region 3, to Gary E. Graham, Virginia DEQ, May 1, 2002, p. 2; Memorandum from EPA, Air Enforcement Division, to Christopher Pilla, Virginia Dept. Env'tl. Quality, "Maplewood Landfill/Ingenco Applicability Determination Issues," April 4, 2002 (available at <<http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/maplewww.pdf>>).

³ See William Spratlin, Director of Air, RCRA and Toxics Division, EPA Region 7, Letter to Peter R. Hamlin, Chief, Air Quality Bureau, Iowa Department of Natural Resources, September 18, 1995, 1 ("Typically, companies don't just locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with one another.").

⁴ Ronald A. Borsellino, EPA Region 2, Letter to Scott Salisbury, MRPC, May 11, 2009, 3.n.7, available at <<http://www.epa.gov/region7/air/title5/t5memos/ocl-mrpc.pdf>> (Borsellino Letter).

⁵ See Walter E. Mugdan, EPA Region 2, Letter to Erin M. Crotty, Commissioner, N.Y.S. Department of Environmental Conservation, "Re: EPA's Review of Proposed Permit for Al Turi Landfill," July 8, 2004, Attachment, p. 2 "As stated in Director Spratlin's letter, a positive answer to only one or more of the seven factors is enough to establish common control between two facilities.").

⁶ EPA Region 2, *Statement of Basis for Air Pollution Control Title V Permit to Operate*, Permit No. 71-OCMH-001, sec. I.D. (citing and quoting the Borsellino Letter), available at <<http://www2.epa.gov/caa-permitting/caa-permits-issued-epa-region-2#currentactions>>.

⁷ Cf. EPA Region 2, In the Matter of Seneca Energy II, LLC, *Order Responding to the December 22, 2012 Request for Objection to the Issuance of a Title V Operating Permit*, Permit No. 8-3244-00040/00002 (June 29, 2015), 16 (landfill-LFGTE facility common control question, directing state air permitting agency to explain "case-specific facts and factors it considered as part of its source determination analysis regarding the two facilities").

elements required for single source status are met here, EPA has found OCL and MRPC “are to be treated as a single source for the purpose of permitting under the PSD, NSR, and title V programs of the Clean Air Act.”⁸

Based on this single-source determination, to determine applicable emissions control requirements the draft Title V permit appropriately combines potential emissions, including calculated emissions for non-significant sources at the combined source and (since the landfill’s flares have insufficient capacity to control landfill gas emissions at times when the LFGTE is not operating, or not operating at full capacity) the additive emissions of flares and the LFGTE facility operating simultaneously. I write specifically in support of EPA’s “worst case scenario” approach to estimating maximum potential emissions of the combined single source in this case.

Respectfully submitted,

/s/

Gary A. Abraham

gaa/cc: Judith Enck, EPA Region 2 Administrator (via email)

⁸ EPA Region 2, *Statement of Basis*, (note 6, above), 4.